IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 688 of 1998

in

SPECIAL CIVIL APPLICATION No 1092 of 1998
With
CIVIL APPLICATION NO. 182 OF 2002

For Approval and Signature:

HON'BLE MISS JUSTICE R.M.DOSHIT
and
HON'BLE MR.JUSTICE S.R.BRAHMBHATT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

JEHANGIR TEXTILE MILLS
Versus
BHUPENDRA BHOGILAL SHAH

Appearance:
1. LETTERS PATENT APPEAL No. 688 of 1998
MR. DEEPAK G. SHUKLA, LD. ADVOCATE FOR NANAVATI & NANAVATI for Appellant.
MR ANAND L SHARMA for Respondent No. 1

CORAM : HON'BLE MISS JUSTICE R.M.DOSHIT
and
HON'BLE MR.JUSTICE S.R.BRAHMBHATT

Date of decision: 13/01/2005

ORAL JUDGEMENT

(Per : HON'BLE MISS JUSTICE R.M.DOSHIT)

1. The Appellant - Jehangir Textile Mills, Ahmedabad challenges the order dated 23rd February, 1998 made by the learned Single Judge in Special Civil Application No. 1092 of 1998.

2. Special Civil Application No. 1092 of 1998 was preferred by the appellant against the judgment & order dated 27th November,1997 passed by the Industrial Court, Ahmedabad in Appeal (I.C.) No: 39 of 1996. Learned advocate Mr. Shukla has submitted that the said writ petition was preferred by the appellant under Article 226 & 227 of the Constitution of India hence the appeal against the order of the learned Single Judge shall be maintainable. Mr. Shukla has brought on the records of the matter further facts by way of additional affidavit dated 13th January, 2005. It is stated that pending the Appeal the appellant, a unit of National Textile Corporation (Gujarat) Limited, has been permitted to close down and in view of the closure of the appellant company the Appeal may be entertained in as much as the respondent workman can not now be reinstated in service as directed by the Industrial Court.

3. We are of the view that, in the writ petition preferred by the appellant the appellant invoked power of superintendence of the High Court conferred by Article 227 of the Constitution. The petition was, therefore, essentially one under Article 227 of the Constitution and not under Article 226 of the Constitution as submitted by Mr. Shukla. Mr. Shukla has relied upon the judgment of the Honourable Supreme Court in the matter of LOKMAT NEWSPAPERS PVT. LTD. Vs. SHANKARPRASAD [(1999) 6 SCC 275)]. In the said matter also Honourable Supreme Court has held that " if Single Judge exercised jurisdiction under Article 226, LPA would be maintainable, but if

jurisdiction exercised under Article 227 it will not be maintainable." In the said case, however, the Court found that the petition was preferred under Article 226 of the Constitution. It was averred that the Labour Court and the Industrial Court had committed serious error of law which had resulted into miscarriage of justice and violation of fundamental rights. Considering the facts of the case Honourable Court held that the learned Single

Judge had exercised power under Article 226 of the Constitution and the Letters Patent Appeal was, therefore, maintainable.

4. In the present case it is not the case of the appellant that any fundamental or statutory right conferred upon the appellant has been infringed by the impugned order of the Industrial Court. What was challenged before the learned Single Judge was the order of the Industrial Court by invoking the power of superintendence conferred upon the High Court by Article 227 of the Constitution. The petition was essentially one under Article 227 of the Constitution. The appeal under clause 15 of the Letters Patent would, therefore, not lie.

5. The Appeal is accordingly dismissed. There shall be no order as to cost.

6. In view of the order in Appeal, civil application stands disposed off.

Dt: 13-1-2005 (MS. R.M. DOSHIT, J)

(S.R. BRAHMBHATT, J)

/vgn